

Uncle Charlie's Sausage Company of Illinois, Inc. and Teamsters, Automotive, Petroleum and Allied Trades, Local Union No. 50, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 14-CA-15531

April 15, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

Upon a charge filed on November 24, 1981, by Teamsters, Automotive, Petroleum and Allied Trades, Local Union No. 50, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Uncle Charlie's Sausage Company of Illinois, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 14, issued a complaint on December 9, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on September 22, 1981, following a Board election in Case 14-RC-9453, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;¹ and that, commencing on or about the first week in November 1981, the exact date being unknown and on or about November 16, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On December 17, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint. On January 15, 1982, Respondent filed an amended answer to the complaint.

¹ Official notice is taken of the record in the representation proceeding, Case 14-RC-9453, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), *enfd.* 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), *enfd.* 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), *enfd.* 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

On January 15, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on January 21, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer and amended answer to the complaint, Respondent admits its refusal to bargain with the Union but denies that such conduct violated Section 8(a)(5) of the Act. In its memorandum in opposition to the counsel for the General Counsel's Motion for Summary Judgment, Respondent essentially attacks the validity of the Union's certification by alleging that because of certain procedural irregularities in the underlying representation case Respondent was denied due process. Specifically, Respondent contends that the Regional Director abused his discretion by denying Respondent's motion for continuance on grounds that (1) the Regional Director erroneously found that the Petitioner's motion to amend its petition during the hearing was not a radical change from the original petition; (2) the Regional Director's refusal to rule on Respondent's appeal of the Hearing Officer's refusal to grant a continuance until the close of the hearing prevented full litigation of the issues; (3) frequent consultations by the Hearing Officer with her superiors regarding Respondent's motions resulted in prejudice to Respondent inasmuch as these persons were unable to hear all the evidence presented; and (4) the Hearing Officer failed to state a basis for her rulings on motions in addition to holding certain portions of the hearing off the record. The General Counsel argues that since Respondent admits the material allegations of the complaint, it is merely attempting to relitigate issues that were or could have been disposed of in the underlying representation case. We agree with the General Counsel.

Our review of the record, including the record in the underlying representation proceeding, Case 14-RC-9453, reveals that the Regional Director for Region 14 issued a Decision and Direction of Election on July 23, 1981, in which he found appropriate a unit of all production and maintenance em-

ployees employed by the Employer at its 1040 Airport Road, Mt. Vernon, Illinois, facility, excluding routemen and route salesmen, office clerical and professional employees, guards and supervisors as defined by the Act. In so doing, the Regional Director denied Respondent's motion for permission to appeal the Hearing Officer's ruling (1) granting the Petitioner's oral motion to amend its petition and (2) denying the Employer's motion for a continuance, on grounds that the unit sought in the amended petition was not such a radical change as to cause prejudice to the Employer's presentation of evidence at the hearing regarding any new issues raised therein. The Regional Director further denied Respondent's motion for rehearing on grounds that the Hearing Officer's rulings were free from prejudicial error. Thereafter, Respondent timely filed a request for review of the Regional Director's decision contending *inter alia* that contrary to the Regional Director the Employer was specifically denied procedural due process when its motions for continuance and rehearing were denied and that the Hearing Officer prejudiced the Employer by consulting with supervisors on her rulings, failing to state the reasons for certain rulings, and by holding certain portions of the hearing off the record. On August 20, 1981, by telegram, the Board denied Respondent's request for review. Pursuant to the Regional Director's direction, an election was conducted on August 21, 1981, in the unit found appropriate. The tally of ballots indicated 14 votes cast for the Union, and 11 against. There were two challenged ballots, a number insufficient to affect the results of the election. Thereafter Respondent filed objections to conduct affecting the results of the election alleging that the Petitioner engaged in a campaign of intimidation, threats, and coercion, and that the Regional Director improperly refused to allow certain employees to cast ballots in the election. On September 22, 1981, the Regional Director for Region 14 issued a Supplemental Decision and Certification of Representative. On October 29, 1981, the Board denied Respondent's request for review of the Regional Director's Supplemental Decision and Certification of Representative.

On or about October 21, 1981, and on November 10, 1981, the Union, by letter, requested Respondent to recognize and to bargain collectively as the exclusive representative of its employees in the appropriate unit. On or about the first week in November 1981, the exact date being unknown, Respondent orally refused the Union's request. On or about November 16, 1981, Respondent, by letter, refused the Union's request. In its answer and amended answer to the complaint, Respondent

admits that it has failed and refused, upon request, to bargain with the Union.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.²

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is an Illinois corporation with its principal office located at 1040 Airport Road, Mt. Vernon, Illinois, where it is engaged in the non-retail packing and sale of meat and related products. During the year ending November 30, 1981, a representative period, Respondent sold and shipped, or caused to be shipped, goods valued in excess of \$50,000, from its Mt. Vernon, Illinois, facility directly to points located outside the State of Illinois.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Teamsters, Automotive, Petroleum and Allied Trades, Local Union No. 50, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

² See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by the Employer at its 1040 Airport Road, Mt. Vernon, Illinois, facility, excluding routemen, and route salesmen, office clerical and professional employees, guards, and supervisors as defined in the Act.

2. The certification

On August 21, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 14, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on September 22, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about October 21, 1981, and on November 10, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about the first week in November 1981, the exact date being unknown, and November 16, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since the first week in November 1981, the exact date being unknown, and November 16, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Uncle Charlie's Sausage Company of Illinois, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Teamsters, Automotive, Petroleum and Allied Trades, Local Union No. 50, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by the Employer at its 1040 Airport Road, Mt. Vernon, Illinois, facility, excluding routemen, and route salesmen, office clerical and professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since September 22, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about the first week in November 1981, the exact date being unknown, and November 16, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Uncle Charlie's Sausage Company of Illinois, Inc., Mt. Vernon, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Teamsters, Automotive, Petroleum and Allied Trades, Local Union No. 50, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees employed by the Employer at its 1040 Airport Road, Mt. Vernon, Illinois, facility, excluding routemen, and route salesmen, office clerical and professional employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at Respondent's facility located at 1040 Airport Road, Mt. Vernon, Illinois, copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 14, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Teamsters, Automotive, Petroleum and Allied Trades, Local Union No. 50, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and condi-

tions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees employed by the Employer at its 1040 Airport Road, Mt. Vernon, Illinois, facility, ex-

cluding routemen, and route salesmen, office clerical and professional employees, guards, and supervisors as defined in the Act.

UNCLE CHARLIE'S SAUSAGE COMPANY OF ILLINOIS, INC.